Supreme Court, U.S.
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No. _____

In the
Supreme Court of the United States

DEREK KYLE FREEMAN,

Petitioner,

v.

JOHN GRUBBS, WARDEN,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

In automobile accidents involving injuries and/or fatalities, and law enforcement suspects one of the drivers of alcohol and/or drug intoxication, it is standard operating procedure for police officers to follow persons involved in the accidents to the hospital for the purpose of obtaining blood draws or statements evidencing intoxication.

This case presents the question whether police may, consistent with *Missouri v. Seibert*, 542 U.S. 600 (2004), utilize emergency room nurses as surrogate interrogators to question injured suspects at the emergency room; and whether, and to what extent, statements made by injured persons in response to questioning performed by emergency room personnel for the *sole purpose of medical diagnosis and treatment* may be used by eavesdropping policemen to obtain the same statements by the later-administration of *Miranda* warnings.

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PETITION FOR A WRIT OF CERTIORARI

TO: The Honorable Chief Justice and Associate Justices of the United States Supreme Court:

Derek Kyle Freeman petitions respectfully for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit.

OPINION BELOW

The opinion issued by the United States Court of Appeals for the Tenth Circuit is unpublished, 134 Fed.Appx. 233, 2005 WL1325008 (10th Cir. (Okla.), June 6, 2005), and is reproduced in the appendix to this petition.

JURISDICTION

The judgment of the United States Court of Appeals for the Tenth Circuit was entered June 2, 2005. Freeman's motion for rehearing was denied July 11, 2005. On September 30, 2005, the Honorable Stephen Breyer, Associate Justice of the Supreme Court of the United States, granted an extension of time within which to file a petition for Writ of Certiorari extending to and including November 8, 2005. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. CONST. AMEND. V provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST. AMEND. VI provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

U.S. CONST. AMEND. XIV, § 1, provides, in pertinent part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the Unites States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Derek Freeman is incarcerated currently in an Oklahoma prison as the result of being convicted by a jury in a state court criminal trial in Norman, Oklahoma. Outlined below is the process through which he has arrived at this Court.

PROCEDURAL SUMMARY

Based in large part upon Freeman's statements made at the ER, on March 17, 1998, Freeman was charged by felony Information, case number CF-98-454, in Cleveland County, Oklahoma with: 1) Manslaughter in the First Degree, driving

a motor vehicle while under the influence of drugs (Morphine); 2) Possession of a Controlled Dangerous Substance (Morphine); and 3) Possession of Drug Paraphernalia.

Jury trial was had April 5-9, 1999. The jury found Freeman guilty on all counts and assessed punishment on Count 1 at 20 years, Count 2 at 10 years and a $10,000 fine, and Count 3 at one year in the county jail and a $1,000 fine. Formal judgment and sentence were imposed by the trial court on July 7, 1999, with all counts to run consecutively for a total sentence of thirty-one years and a total fine of $11,000.

Freeman appealed directly to the Oklahoma Court of Criminal Appeals. *See Freeman v. State*, No. F-1999-950 (Okla. Crim. App., September 8, 2000) (not for publication). The Court of Criminal Appeals affirmed Freeman's convictions in an unpublished summary opinion. Freeman's Petition for Rehearing was denied on October 21, 2000.

Freeman returned to the state district court on November 3, 2000 and filed a Motion for Suspended Sentence After Appeal and/or Motion for Concurrent Sentences. The state district court denied the motion on December 5, 2000. Freeman pursued state post-conviction relief on September 5, 2001. The district court granted Freeman's Application in open court on February 4, 2002 and, on February 13, 2002, entered a written order directing that the time to serve on Counts 2 and 3 shall be suspended, and still consecutive to Count 1.

The State of Oklahoma appealed the district court's decision to the Oklahoma Court of Criminal Appeals. *See State v. Freeman*, No. PC-2002-210 (Okla. Crim. App., May

7, 2003). The appellate court affirmed the order of the state district court suspending the time to serve on Counts 2 and 3.

On June 21, 2002, Freeman filed a Petition for a Writ of Habeas Corpus in the United States District Court for the Western District of Oklahoma. On December 12, 2003, the District Court adopted the Report and Recommendation of the Magistrate and denied Freeman's Petition. Freeman filed Notice of Appeal to the United States Court of Appeals for the Tenth Circuit on January 5, 2004. The Tenth Circuit denied relief in the attached unpublished opinion.

STATEMENT OF THE FACTS

On March 16, 1998 at approximately 9:00 p.m., Cory Degarmo was driving home on a rain soaked street in Norman, Oklahoma, when he drove upon an automobile accident. According to Degarmo, the weather that night was "terrible" and "rainy" and when he approached the accident scene he saw that two cars were involved and that both drivers were injured. Degarmo saw that Freeman, the driver of one of the vehicles, was unconscious, as was the driver of the other vehicle, a woman named Elizabeth Boyls.

At the scene, Degarmo determined that Boyls had no pulse and he pulled her out of her car and administered CPR. Other passersby arrived on the scene and assisted Degarmo with CPR on Boyls who was non-responsive. During the time that CPR was being administered to Boyls, Freeman regained consciousness and told Degarmo that he recalled dropping something on the passenger floorboard of his vehicle and must have drifted left of center as he picked it up.

Almost immediately after Degarmo stopped at the scene, fire-fighter Homer Smith arrived at the scene and assisted in